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## Edmonds v. Compagnie Generale Translanticque: The Supreme Court Sets a Course in Third-Party Litigation under the Longshoremen's and Harbor Workers' Compensation Act

William Bobo Jr.

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# NOTES

## **EDMONDS v. COMPAGNIE GENERALE TRANSLANTIQUE: THE SUPREME COURT SETS A COURSE IN THIRD-PARTY LITIGATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT**

In *Edmonds v. Compagnie Generale Translanticque*<sup>1</sup> the Supreme Court decided an issue that had vexed courts and commentators since the passage of the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act (LHWCA):<sup>2</sup> what is the extent of liability of a vessel owner who is concurrently negligent with a stevedore-employer?<sup>3</sup> *Edmonds* concerned a LHWCA third-party suit<sup>4</sup> by a longshoreman against a vessel owner on whose ship the longshoreman had been injured. The suit was brought in federal district court where a jury determined that the longshoreman had suffered total damages of \$100,000. Additionally, the jury apportioned the negligence as follows: the longshoreman—10 percent, the vessel owner—20 percent, and the stevedore-employer—70 percent.<sup>5</sup> The stevedore-employer was immune from suit by the longshoreman<sup>6</sup> because the longshoreman had received \$49,152 in compensation benefits from the stevedore's insurance company.<sup>7</sup> At issue was whether the vessel owner was liable for the total amount of damages (\$100,000) less the amount due to the longshoreman's negligence (\$10,000)<sup>8</sup> or only for the amount of damages proportionate

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1. 99 S. Ct. 2753 (1979).

2. 33 U.S.C. §§ 901-948(a) (1976).

3. Under the conventional employment arrangement for the loading and unloading of vessels, the vessel owner employs a stevedoring company, which in turn employs the longshoremen.

4. Third-party suits are authorized by 33 U.S.C. § 905(b) (1976). For the procedural aspects of these suits, see 33 U.S.C. § 933 (1976).

5. 99 S. Ct. at 2755.

6. See 33 U.S.C. § 905(a) (1976).

7. 99 S. Ct. at 2764 n.1 (Blackmun, J., dissenting).

8. Maritime law follows the concept of comparative negligence of plaintiff and defendant. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953).

to the vessel owner's degree of fault (\$20,000). The issue was complicated by the existence of a lien on any recovery, held by the stevedore's insurer, for the amount of compensation benefits paid to the longshoremen.<sup>9</sup>

The district court held that the vessel owner was liable for \$90,000.<sup>10</sup> On appeal, a panel of the Fourth Circuit Court of Appeals determined that the vessel owner was liable for its proportionate share (\$20,000) plus the amount of the stevedore's lien (\$49,152), not to exceed the entire possible award against the vessel owner (\$90,000).<sup>11</sup> On *en banc* rehearing, the court of appeals held that the vessel owner was liable only for the \$20,000 attributable to its proportionate fault but reached no decision on the effect of the diminished recovery on the insurer's lien.<sup>12</sup> Because of disagreement among the circuit courts,<sup>13</sup> the Supreme Court granted certiorari.<sup>14</sup> The Court, in an opinion by Justice White joined by Chief Justice Burger and Justices Brennan, Stewart, and Rehnquist, reversed the decision of the Fourth Circuit Court of Appeals and held that the vessel owner was liable for \$90,000, the full amount of damages less that portion due to the longshoreman's negligence.<sup>15</sup>

## I. REJECTION OF PROPORTIONATE FAULT BY THE SUPREME COURT

The Fourth Circuit Court of Appeals had found that the limitation of liability to the proportion of fault was mandated by LHWCA section 905(b),<sup>16</sup> which had been inserted as part of the 1972 amendments. This section provides:

In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against a vessel as a third party in accor-

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9. 99 S. Ct. at 2764 n.1 (Blackmun, J., dissenting).

10. *Id.* at 2755.

11. *Edmonds v. Compagnie Generale Translanticque*, 558 F.2d 186 (4th Cir. 1977).

12. *Edmonds v. Compagnie Generale Translanticque*, 577 F.2d 1153 (4th Cir. 1978).

13. See *Zapico v. Bucyrus-Erie Co.*, 579 F.2d 714 (2d Cir. 1978); *Samuels v. Empresa Lineas Maritimas Argentinas*, 573 F.2d 884 (3d Cir. 1978); *Shellman v. United States Lines, Inc.*, 528 F.2d 675 (9th Cir. 1975), *cert. denied*, 425 U.S. 936 (1976); *Dodge v. Mitsui Shintoku Ginko K.K. Tokyo*, 528 F.2d 669 (9th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976).

14. 439 U.S. 952 (1978).

15. 99 S. Ct. at 2762-63.

16. 577 F.2d at 1155.

dance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was *caused by the negligence of a person engaged in providing stevedoring services*.<sup>17</sup>

The court of appeals found a conflict between the italicized portions of the first and second sentences and reasoned:

The first sentence says that if the injury was caused by the negligence of a vessel the longshoreman may recover, but the second sentence says he may not recover anything of the ship if his injury was caused by the negligence of a person providing stevedoring services. The sentences are irreconcilable if read to mean that any negligence on the part of the ship will warrant recovery while any negligence on the part of the stevedore will defeat it. They may be harmonized only if read in apportioned terms.<sup>18</sup>

The Supreme Court rejected the Fourth Circuit's interpretation of section 905(b) and noted that "the conflict seen by the Court of Appeals is largely one of its own creation."<sup>19</sup> The Court stated that section 905(b) was directed at two different employment situations. The first sentence was applicable to the conventional relationship in which the vessel employs the stevedore, which in turn employs the longshoremen. The second sentence was directed to the less conventional situation in which the vessel owner employs the longshoremen directly.<sup>20</sup> Thus, the two sentences could not interact as the court of appeals had suggested because both sentences would never apply to the same case.

Respondent vessel owner proffered a second argument based on section 905(b). The essence of this argument was that the term "caused" in the first and second sentences could not be given the same meaning and make sense unless read in terms of proportionate causation. For example, if "caused" in the first sentence meant "caused by any negligence whatsoever," then

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17. 33 U.S.C. § 905(b) (1976) (emphasis added).

18. 577 F.2d at 1155.

19. 99 S. Ct. at 2758.

20. *Id.*

this meaning when applied to the second sentence would completely preclude a suit by an injured longshoreman employed directly by the vessel when his injuries were caused by any negligence whatsoever on the part of other longshoremen.<sup>21</sup> The Court recognized that the statute was inartfully drawn but, relying on the idea that an equally absurd result would be reached if "cause" were read throughout to mean "completely caused by,"<sup>22</sup> the Court harmonized the problems by "constru[ing] the second sentence to permit a third-party suit against the vessel providing its own loading and unloading services when negligence in its nonstevedoring capacity *contribute[d]* to the injury."<sup>23</sup>

Having concluded that section 905(b) did not compel a proportionate fault concept, the Court noted that "the legislative history [of the amendments] strongly counsels against the Court of Appeals' interpretation of the statute . . . ."<sup>24</sup> The Court relied on two factors. First, prior to the amendments a longshoreman could sue the vessel owner for the entire amount of damages, and because the amendments and debates were silent on the proportionate fault concept, it was unlikely that Congress intended to change existing law.<sup>25</sup> Second, the Court noted that the intent of the amendments, as expressed in the committee reports, was to place the injured longshoreman in the same position as injured land-based workers, who could generally recover in full from a third-party concurrent tortfeasor.<sup>26</sup>

The Court also observed that the court of appeals' proportionate fault concept would produce "consequences that we doubt Congress intended. It may remove some inequities, but it creates others and appears to shift some burdens to the longshoreman."<sup>27</sup> Apparently assuming that the stevedore's lien was inviolable, the Court reasoned that under proportionate fault, most or all of the reduced recovery would go to the stevedore and leave the injured longshoreman with nothing.<sup>28</sup> An additional purpose of the amendments to the Act was to cut off the former

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21. *Id.* at 2759. See Brief for Respondent at 12.

22. 99 S. Ct. at 2759.

23. *Id.* (emphasis added).

24. *Id.* at 2760.

25. *Id.*

26. *Id.*

27. *Id.* at 2761.

28. *Id.* at 2761-62.

right of the vessel owner to sue the stevedore for indemnity<sup>29</sup> and thus to protect the stevedore from having to routinely appear in third-party actions. The Court implied that the proportionate fault concept would return the stevedore to the courtroom.<sup>30</sup>

In light of the foregoing analysis, the Court concluded that "Congress did not intend to change the judicially-created rule that the shipowner can be made to pay all the damages not due to the plaintiff's own negligence . . . ."<sup>31</sup> However, the question still remained whether the Court, in the exercise of its general maritime power, could adopt proportionate fault. The Court reasoned that it was not free to make such changes because

[b]y now changing what we have already established that Congress understood to be the law, and did not itself wish to modify, we might knock out of kilter this delicate balance. . . . Once Congress has relied upon the conditions that the courts have created, we are not as free as we would otherwise be to change them.<sup>32</sup>

In dissent Justice Blackmun, joined by Justices Marshall and Stevens, attacked the majority view on two primary grounds. First, the dissenters argued that Congress did not intend to preclude the Court from fashioning a rule of proportionate fault:

The Court suggests that Congress, in enacting § 905(b), "aligned the rights and liabilities of stevedores, shipowners, and longshoremen" on the specific assumption that the shipowner would not be allowed to reduce its liability because of the stevedore's comparative negligence. . . . The legislative history belies this notion. Congress had two narrow objectives in mind in enacting § 905(b) in 1972: to overcome this Court's decision in *Seas Shipping Co. v. Sieracki* . . . and its decision in *Ryan Stevedoring Co. v. Pan Atlantic S.S. Corp.* : . . .<sup>33</sup>

As part of this argument, the dissent noted that the legislative history of the Act stated that the courts were expected to fill the contours of section 905(b).<sup>34</sup>

Second, the dissenters, apparently assuming that the lien of

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29. See notes 68-69 and accompanying text *infra*.

30. 99 S. Ct. at 2762.

31. *Id.*

32. *Id.* at 2763 (footnote omitted).

33. *Id.* at 2765 (Blackmun, J., dissenting) (citations omitted).

34. *Id.* at 2765-66 (Blackmun, J., dissenting).

the concurrently negligent stevedore could be reduced, rejected the notion that a proportionate fault system would work an undue hardship on longshoremen. They noted that it was inherent in workmen's compensation schemes that the worker relinquish his opportunity for a full-damage recovery in some cases for quick and certain benefits without regard to fault. Not allowing the longshoreman to obtain full damages against a vessel owner whose negligence was only a partial cause of the accident would be no more unfair.<sup>35</sup>

The dissent concluded that:

[t]his case represents the relatively common situation where a statute is open to two interpretations, and the legislative history, although instructive as to the overriding purposes of Congress, provides no specific guidance as to which interpretation Congress would have adopted if it had addressed the precise issue. Our duty, in such a case, is to adopt the interpretation most consonant with reason, equity, and the underlying purposes Congress sought to achieve.<sup>36</sup>

In the opinion of the dissent, a proportionate fault rule was the appropriate interpretation.

## II. LHWCA ACTIONS PRIOR TO THE 1972 AMENDMENTS

A consideration of the history of third-party actions under the LHWCA, specifically the Supreme Court's decisions governing such actions, is necessary to understand the 1972 amendments interpreted in *Edmonds*. The LHWCA was passed by Congress in 1927 in response to two Supreme Court decisions holding unconstitutional the application of a state workman's compensation statute to longshoremen injured by maritime torts and holding that longshoremen could sue as "seamen" under the Jones Act.<sup>37</sup> The LHWCA established a no-fault compensation scheme for injured longshoremen and made the payment of compensation benefits the exclusive liability of the employer to injured longshoremen. Provision was made for third-party suits in section 933(a):

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35. *Id.* at 2766 (Blackmun, J., dissenting).

36. *Id.* at 2767 (Blackmun, J., dissenting).

37. G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* 278 (2d ed. 1975) [hereinafter cited as G. GILMORE]. The Supreme Court decisions were *International Stevedoring Co. v. Haverly*, 272 U.S. 50 (1926) and *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917).

If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some other person other than the employer is liable in damages, *he may elect whether to receive such compensation or to recover damages against such third persons.*<sup>38</sup>

Section 933(b)<sup>39</sup> originally provided that any acceptance of compensation payments would act as an assignment to the employer of the employee's third-party claim. This was later amended so that only the acceptance of compensation under an *award* would operate as an assignment.<sup>40</sup> Under section 933(d)<sup>41</sup> this assignment enabled the employer to bring suit against the third party. Section 933(e)<sup>42</sup> set up a plan for the distribution of judgment proceeds and permitted the employer to recover his compensation payments out of the judgment. Thus, the employer who brought suit was given a statutory "lien" on the recovery. The employee, however, could receive benefits without an award<sup>43</sup> and elect to sue the third party directly. The statute gave the employer no right to recover his payments from the employee's recovery when the employee brought suit, but the courts gave the employer an "equitable" lien to recover such payments.<sup>44</sup> Under the 1959 amendments an employee was no longer required to elect between an award and a third-party suit.<sup>45</sup> Failure to bring suit within six months of the award, however, operated as an assignment to the employer.<sup>46</sup>

In the first twenty years after passage of the Act, the longshoreman's third-party suit was an action for a maritime tort based on negligence and few such actions were brought.<sup>47</sup> Then

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38. Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 33(a) 44 Stat. 1440 (1927) [hereinafter cited as 1927 LHWCA] (current version at 33 U.S.C. 933(a) (1976)).

39. 1927 LHWCA, *supra* note 38, § 33(b).

40. See 33 U.S.C. § 933(b) (1976).

41. *Id.* § 933(d).

42. *Id.* § 933(e).

43. *Id.* § 914(a) provides for immediate payment by the employer without an award unless compensation liability is controverted.

44. See Coleman & Daly, *Equitable Credit: Apportionment of Damages According to Fault in Tripartite Litigation Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 35 Md. L. Rev. 353, 401 (1976).

45. See 33 U.S.C. § 933(a) (1976).

46. See *id.* § 933(b).

47. G. GILMORE, *supra* note 37, at 410.



the Supreme Court, in *Seas Shipping Co. v. Sieracki*,<sup>48</sup> held that the longshoreman was entitled to a warranty of seaworthiness from the vessel owner and therefore was entitled to the seaworthiness remedy. Under the warranty the vessel owner guaranteed a safe ship and was liable for injuries caused by an unsafe condition. The seaworthiness remedy traditionally had been afforded seamen and the scope of the vessel owner's duty was defined in *Sieracki*:

It is essentially a species of liability without fault, analogous to other well known instances in our law. Derived from and shaped to meet the hazards which performing the service imposes, the liability is neither limited by conceptions of negligence nor contractual in character. It is a form of absolute duty owing to all within the range of its humanitarian policy.<sup>49</sup>

This broadened liability of the vessel owner spawned a series of cases seeking to shift some liability from the vessel owner to the stevedore.<sup>50</sup>

In 1952 the Court, in *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*,<sup>51</sup> refused to allow contribution between joint tortfeasors in a LHWCA third-party suit. *Halcyon* involved a longshoreman, injured aboard a vessel, who had obtained a judgment against the vessel owner. The trial court found that the negligence of Haenn, the stevedore-employer, constituted 75 percent of the total negligence causing the accident and that the negligence of the vessel owner constituted 25 percent of the cause. The vessel owner sought a rule of proportionate contribution while the stevedore-employer sought a rule of no contribution or, alternatively, a rule of equal division of damages that is applied in maritime collision cases.<sup>52</sup> The court of appeals had determined that a right of contribution existed, but that the stevedore's amount of contribution could not exceed the amount

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48. 328 U.S. 85 (1946).

49. *Id.* at 94. See G. GILMORE, *supra* note 37, at 383-404, for an in-depth discussion of the evolution and contours of the unseaworthiness remedy.

50. Steinberg, *The 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act: Negligence Actions by Longshoremen Against Shipowners—A Proposed Solution*, 37 OHIO ST. L.J. 767, 771 (1976). See G. GILMORE, *supra* note 37, at 411. "After *Sieracki* counsel for the shipowners began to explore the possibility of passing on to others some or all of their client's liability for unseaworthiness. They succeeded beyond their wildest dreams." *Id.*

51. 342 U.S. 282 (1952).

52. *Id.* at 284.

the stevedore would have paid in LHWCA benefits had the longshoreman elected to seek a statutory compensation award.<sup>53</sup> The Supreme Court rejected the court of appeals' approach and noted that "[b]oth parties claim that the decision below limiting an employer's liability to contributing to those uncertain amounts recoverable under the Harbor Workers' Act is impractical and undesirable."<sup>54</sup> The Court then refused to fashion a rule of contribution on the ground that the area of LHWCA third-party suits was largely one of statutory creation and that "solution of the problem should await congressional action."<sup>55</sup> The Court failed to decide whether section 905<sup>56</sup> precluded contribution.<sup>57</sup> Basically, the Court refused to overturn the traditional judicial rule of no contribution in noncollision cases.

A year later the Court reaffirmed *Halcyon* in *Pope & Talbot, Inc. v. Hawk*.<sup>58</sup> *Pope & Talbot* involved an injured longshoreman who had been receiving payments from the employer, which gave the employer a right to reimbursement out of any recovery.<sup>59</sup> The vessel owner and stevedore were both found negligent and the vessel owner sought to have his damages reduced by the amount of compensation benefits paid to the longshoreman. The Court, after a very brief discussion, refused to do so. It held that such a reduction would be the substantial equivalent of contribution, which had been rejected in *Halcyon*, and that such a reduction would frustrate the purpose of section 933, which was to "protect employers who are subject to absolute liability."<sup>60</sup>

A series of decisions after *Sieracki* held the vessel owner liable for unseaworthiness for conditions created on the vessel by acts of the stevedore and its employees, the longshoremen.<sup>61</sup> In

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53. *Baccile v. Halcyon Lines*, 187 F.2d 403 (3d Cir. 1951).

54. 342 U.S. at 284.

55. *Id.* at 285.

56. 1927 LHWCA, *supra* note 38, § 5 (current version at 33 U.S.C. § 905 (1976)).

This section provides:

The liability of an employer prescribed in section [904 of this title] shall be exclusive and in place of all other liability of such employer to the employee . . . and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death . . . .

*Id.*

57. 342 U.S. at 286 n.12.

58. 346 U.S. 406 (1953).

59. *Id.* at 407.

60. *Id.* at 412.

61. See G. GILMORE, *supra* note 37, at 393-98.

1956, however, in *Ryan Stevedoring Co. v. Pan Atlantic Steamship Corp.*,<sup>62</sup> the vessel owner finally prevailed. *Ryan* involved an action against the vessel owner for unseaworthiness and negligence based on the improper loading of cargo by the stevedore. The vessel owner sought contractual indemnity from the negligent stevedore. The Court found the stevedore liable under a breach of a warranty of workmanlike services. The Court held that the liability of the stevedore under a warranty, since it was contractual in nature, was not barred by section 905 of LHWCA and that an express contract term was not required to create the warranty.<sup>63</sup> Later cases broadened the scope of the warranty tremendously<sup>64</sup> and allowed the vessel owner to be indemnified by the stevedore for the entire amount of damages in a large number of cases.<sup>65</sup> Thus, the end result of *Ryan* and its progeny was, from the stevedore's view, a very expensive triangle of liability. Maritime workers could recover full damages in an unseaworthiness action against the vessel owner but, in many cases, the stevedore-employer bore the ultimate liability. "To many critics . . . the result seemed offensive to the basic theory of any compensation system. To maritime workers (and their lawyers) the result seemed like pie in the sky now."<sup>66</sup> Clearly, the Court in *Sieracki* and *Ryan* "had engaged in judicial legislation at the outermost extreme."<sup>67</sup>

### III. THE 1972 AMENDMENTS AND SUBSEQUENT DEVELOPMENTS

The elimination of this circuitous liability route was one of the primary purposes of the 1972 amendments to the LHWCA. Another purpose was to increase statutory compensation benefits that had not been increased since 1961.<sup>68</sup> The increase in benefits was linked to the elimination of circuitous liability by stevedoring interests who had argued that additional funds could not be

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62. 350 U.S. 124 (1956).

63. *Id.* at 131-35.

64. *See* G. GILMORE, *supra* note 37, at 444.

65. *Id.* at 445. "It is to be borne in mind that the shipowner's indemnity recovery was for 100% of the damages, even in cases where the shipowner's negligence had created the condition of unseaworthiness and the employer had not been negligent at all." *Id.*

66. *Id.* at 411.

67. Steinberg, *supra* note 50, at 773.

68. *See* H.R. REP. NO. 92-1441, 92d Cong., 2d Sess. 1, reprinted in [1972] U.S. CODE CONG. & AD. NEWS 4698, 4698-99 [hereinafter cited as HOUSE REPORT]. Coleman & Daly, *supra* note 44, at 365.

spared for compensation benefits because of the high expenses occasioned by *Ryan*-type indemnity actions.<sup>69</sup>

The original administration proposal for eliminating the problem of the third-party suit was to classify the vessel owner as a statutory employer and thus immunize the vessel owner from third-party action.<sup>70</sup> Hearings were held before the House Select Subcommittee on Labor of the Committee on Education and Labor and the Senate Subcommittee on Labor of the Committee on Labor and Public Welfare.<sup>71</sup> The longshoremen were strongly opposed to classifying vessel owners as employers. They preferred instead to retain the unseaworthiness remedy and to eliminate the indemnity action between the vessel owner and the stevedore.<sup>72</sup> Since the administration proposal would have eliminated entirely third-party suits against the vessel owner, very little mention was made in the hearings of *Halcyon* or the problem of contribution that the Court had left for Congress to resolve twenty years earlier.<sup>73</sup>

69. Coleman & Daly, *supra* note 44, at 370.

70. The original proposals were contained in H.R. 3505 and S. 525, 92d Cong., 2d Sess. (1972).

71. See *Hearings on S. 2318, S. 525, and S. 1547 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 92d Cong., 2d Sess. (1972) [hereinafter cited as *Senate Hearings*] and *Hearings on H.R. 247, H.R. 3505, H.R. 12006, and H.R. 15023 Before the Subcomm. on Labor of the House Comm. on Education and Labor*, 92d Cong., 2d Sess. (1972) [hereinafter cited as *House Hearings*].

72. See Coleman & Daly, *supra* note 44, at 370.

73. The author could find only the following excerpts dealing with the contribution problem out of the many hundreds of pages of testimony: "But in 1953, in *Pope & Talbot vs. Hawk* . . . the Supreme Court ruled that there could be no contribution among joint tortfeasors in maritime personal injury cases. The Court referred this problem to Congress but to date nothing has been done about it." *Senate Hearings*, *supra* note 71, at 280; *House Hearings*, *supra* note 71, at 83 (statement of Francis A. Scanlan on behalf of the National Maritime Compensation Committee).

Now, applying the comparative negligence doctrine to the facts of the situation that we have, all that is necessary in order to correct this rather inequitable situation is this: Mr. Foreman and ladies and gentlemen of the jury: if you find that the stevedoring company contributed to the happening of the accident, then you will determine to what extent its wrong caused the damage.

If you find that the shipowner is negligent, or unseaworthiness contributed to the happening of the accident, then you determine what percentage and apply that to the award.

In this way, everybody bears the fair share of the burden of their own wrong.

*Senate Hearings*, *supra* note 71, at 355 (statement of David B. Kaplan, Chairman, Admiralty Section, American Trial Lawyers Association, while discussing the problem of the vessel owner being held liable for the stevedore's negligence under unseaworthiness).

The compromise solution to the third-party liability problem was section 905(b), which differed substantially from the original administration proposal.<sup>74</sup> Section 905(b) eliminated the action for unseaworthiness and prohibited the indemnity ac-

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If the shipowner is permitted this action over against the stevedore-employer, most of us believe proration of damages according to the degree of fault by each in causing the worker's injury would be much more equitable than this often-times harsh doctrine of complete indemnity regardless of the degree of fault by each.

*Senate Hearings, supra* note 71, at 373; *House Hearings, supra* note 71, at 136 (analysis of Senate Bill 525/House Bill 3505 prepared by David B. Kaplan).

This is comparative negligence. It is the theory that exists in many, many other areas of the practice of law and the judge will instruct [the jury] . . . if you find the conduct of defendant No. 1 contributed to the happening of this accident in X amount, and you find that the conduct of defendant No. 2 contributed in X amount, you will make your award based on the respective faults of the defendants.

We have lived with this kind of determination of fault.

The simplest way to handle the problem as it now exists—and it is in some respects offensive to have a stevedoring company who pays insurance premiums for compensation coverage be required to pick up the tab for the liability of the shipowner, who is a separate entity. They should be separated. They should have their respective liability.

*House Hearings, supra* note 71, at 148 (statement of David B. Kaplan).

In the maritime, we do not have contribution between joint tort-feasors under the Supreme Court decision in the *Haloyon* [sic] case. There they could not, under the general maritime law without statute, have an apportionment of damages between the vessel owner and the stevedore because the Supreme Court could not find that in the Admiralty.

One of the proposals made by Mr. Kaplan was to create, by statute, that contribution between joint tort-feasors.

One of the answers is that that alters the compensation scheme and that really what the stevedore was promised under the Longshoremen's and Harborworkers [sic] Act was exclusive liability for damages to one of its own employees.

*House Hearings, supra* note 71, at 152 (statement of John Martzell, President of Louisiana Trial Lawyers Association).

74. See Coleman & Daly, *supra* note 44, at 372.

This gap was bridged during a meeting, attended by representatives of all interested factions, which had been called in the hope that a last-minute compromise could be worked out, thereby enabling the passage of the amendments before the 92d Congress was adjourned. Many narrow issues were discussed at the meeting, including among them the question of apportionment of loss where the fault of both the third-party shipowner and the employer-stevedore combined to cause injury to a longshoreman. Several formulas were advanced, but resolution of the problem could not be achieved in the time available. Ultimately, solution of the question was left to the courts.

*Id.*

tion.<sup>75</sup> Neither the House nor the Senate Committee reports on the bill contain any reference to *Halcyon* or any discussion of the problem of concurrently negligent tortfeasors. The reports do state as the goal of the amendment that when "a longshoreman or the worker covered under the Act is injured through the fault of the vessel, the vessel should be liable for damages as a third party, just as land-based third parties in non-maritime pursuits are liable for damages when, through their fault, a worker is injured."<sup>76</sup>

Two post-1972 cases, although not involving the LHWCA amendments, are pertinent to the question of proportionate contribution among joint tortfeasors. In *Cooper Stevedoring Co. v. Fritz Kopke, Inc.*,<sup>77</sup> the Court allowed contribution between joint tortfeasors in a suit brought under the LHWCA against two concurrently negligent defendants, neither of which was statutorily immune from suit. The Court was careful to distinguish *Halcyon*:

Confronted with the possibility that any workable rule of contribution might be inconsistent with the balance struck by Congress in the Harbor Workers' Act between the interests of carriers, employers, employees, and their respective insurers, we refrained from allowing contribution in the circumstances of that case.

These factors underlying our decision in *Halcyon* still have much force. Indeed, the 1972 amendments to the Harbor Workers' Act re-emphasize Congress' determination that as between an employer and its injured employee, the right to compensation under the Act should be the employee's exclusive remedy.<sup>78</sup>

*Cooper* involved an equal division of damages so the Court did not reach the issue of contribution proportionate to fault.<sup>79</sup>

In *United States v. Reliable Transfer Co.*,<sup>80</sup> however, a collision case, the Court rejected the equal division of damages rule

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75. *Id.* at 372-73.

76. HOUSE REPORT, *supra* note 68, at 4702.

77. 417 U.S. 106 (1974).

78. *Id.* at 112-13. For one commentator's view that the Court in *Cooper* believed "that *Halcyon* stood principally for the proposition that any scheme which purported to increase a stevedore's obligation to compensate its injured employees beyond the statutory requirement was prohibited," see Coleman, *Life Expectancy of an Equitable Credit*, 12 FORUM 683, 689 (1977).

79. 417 U.S. at 108 n.3.

80. 421 U.S. 397 (1975).

traditionally applied to collision cases (applied for different reasons in a noncollision case in *Cooper*) and embraced a proportionate fault rule.<sup>81</sup> In response to the argument that this change should be made by the Congress, the Court replied that "the judiciary has traditionally taken the lead in formulating flexible and fair remedies in the law maritime, and 'Congress has largely left to this Court the responsibility for fashioning and controlling rules of admiralty law.'"<sup>82</sup>

One final post-amendment development was the proposal of "equitable credit" as an attempt to spread more fairly the burden of damages among concurrently negligent parties and yet stay within the confines of the LHWCA. The concept was initiated by Cohen and Dougherty<sup>83</sup> and was adopted by some courts.<sup>84</sup> The "equitable credit" approach attempts to reconcile proportionate liability with the stevedore's lien, something the court of appeals did not attempt in the *en banc* decision in *Edmonds*. The basic parameters of the approach, when a concurrently negligent stevedore and vessel owner are involved, are: (1) the vessel owner would be liable only for that share of damages proportionate to its fault; (2) the negligent stevedore would not have any liability beyond the statutory compensation benefits; and (3) the negligent stevedore's lien on the longshoreman's recovery would be reduced by the amount that the recovery was reduced on account of the negligence of the stevedore.<sup>85</sup> The respondent in *Edmonds* espoused<sup>86</sup> and the dissent implicitly relied on<sup>87</sup> the equitable credit approach.

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81. *Id.* at 411.

We hold that when two or more parties have contributed by their fault to cause property damage in a maritime collision or stranding, liability for such damages is to be allocated among the parties proportionately to the comparative degree of their fault, and that liability for such damages is to be allocated equally only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault.

*Id.*

82. *Id.* at 409 (quoting *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 20 (1963)).

83. See Steinberg, *supra* note 50, at 778. See also Cohen & Dougherty, *An Opportunity for Equitable Uniformity in Tripartite Industrial Accident Litigation*, 19 N.Y.L.F. 587 (1974).

84. Steinberg, *supra* note 50, at 778.

85. See Cohen & Dougherty, *supra* note 83, at 606. For examples of how the credit would work in various cases, see Coleman & Daly, *supra* note 44, at 355-62.

86. See Brief for Respondent at 45-49.

87. 99 S. Ct. at 2769 & n.5 (Blackmun, J., dissenting).

#### IV. ANALYSIS OF THE SUPREME COURT'S OPINION

The Court's decision in *Edmonds* was based on the propositions that Congress, in the 1972 amendment process, did not expressly intend to adopt proportionate fault, that certain consequences of such a system were inconsistent with congressional intent, and that because Congress had relied on previous Court decisions inimical to proportionate fault, the Court was precluded from changing the law as part of its maritime authority.<sup>88</sup> The majority did not examine in depth the relative merits of the proportionate fault/equitable credit approach and the approach ultimately adopted.<sup>89</sup> Such an examination is not within the scope of this note.<sup>90</sup> Instead, the merits of the Court's three major bases for decision will be examined.

The Court's rejection of the major rationale of the court of appeals' decision—that the language of section 905(b) compels a proportionate fault system<sup>91</sup>—was correct although not entirely for the stated reason. The Court properly interpreted the first and second sentences of the statute to cover two distinct employment relationships.<sup>92</sup> The Court also recognized the extreme results reached if "caused by" means either "caused by any part" or "caused solely by," with the same meaning applied to both sentences. Unfortunately, the Court concluded that "caused by" must have a different meaning in the respective sentences, thereby ignoring the harmony produced if "caused by" is interpreted to mean proportionate causation.<sup>93</sup> Even if this latter interpretation had been adopted, however, it would have been a mistake to have resolved this complex issue based on a technical statutory construction. The approach taken by the Court, view-

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88. See notes 26-32 and accompanying text *supra*.

89. See 99 S. Ct. at 2761-62.

90. Readers interested in such an analysis should read Coleman & Daly, *supra* note 44 (favoring the equitable credit theory) and Steinberg, *supra* note 50 (opposing the theory). See also Cohen & Dougherty, *supra* note 83; Robertson, *Negligence Action by Longshoremen Against Shipowners Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 7 J. MAR. L. & COM. 447 (1976); Shorter, *In the Wake of the 1972 Amendments to the L. & H.W.C.A.: The Vessel's Rights Against the Stevedore*, 7 J. MAR. L. & COM. 671 (1976).

91. 99 S. Ct. at 2758-60. See notes 20-23 and accompanying text *supra* for a summary of the Court's arguments.

92. See HOUSE REPORT, *supra* note 68, at 4705.

93. 99 S. Ct. at 2764-65 n.3 (Blackmun, J., dissenting).



ing the language of section 905(b) as inconclusive,<sup>94</sup> is more reasonable.<sup>95</sup>

The Court also correctly found that the legislative history was not indicative of an intent to adopt a proportionate fault rule. Language in the legislative history cited by respondent to support this intent<sup>96</sup> was not meant to apply to concurrently negligent tortfeasors.<sup>97</sup> In addition, the intent expressed in the Committee reports to treat longshoremen the same as injured land-based workers is also only marginally instructive since treatment by the states is not uniform.<sup>98</sup> Thus, nothing in the statute or legislative history compels a proportionate fault concept.

The Court's second conclusion, that certain consequences of a proportionate fault concept were inconsistent with the intent of Congress, is on less solid ground. The first such consequence was that an undue burden would be placed on the longshoreman whom the Act seeks to protect. In support of this proposition the Court first sought to establish that the proportionate fault concept would result in the longshoreman sometimes getting less than full damages.<sup>99</sup> The persuasiveness of this argument is undermined, as the dissent urged,<sup>100</sup> by the fact that workmen's compensation schemes are based on the theory that the employee may receive less than full damages for work-related injuries in exchange for quick and guaranteed benefits for every work-related injury without regard to fault. If it is considered equitable for an employee to be denied full recovery from a 100 percent negligent employer, it is difficult to find any inequity in denying an employee full recovery from a 20 percent negligent third party.

Apparently assuming that the stevedore's lien<sup>101</sup> must be satisfied in all cases, the Court next addressed the consequence that, under proportionate fault, the longshoreman would lose

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94. 99 S. Ct. at 2758.

95. See Coleman & Daly, *supra* note 44, at 369.

96. See 99 S. Ct. at 2760 & n.23.

97. See HOUSE REPORT, *supra* note 68, at 4705.

98. The Committee's position has been undercut further since several states recently have adopted the equitable credit approach. See Cohen & Dougherty, *supra* note 83, at 594-602; Coleman & Daly, *supra* note 44 at 381-83.

99. 99 S. Ct. at 2761.

100. *Id.* at 2766 (Blackmun, J., dissenting).

101. See notes 42-44 and accompanying text *supra*.

much, if not all, of his diminished recovery to the stevedore.<sup>102</sup> If the stevedore's lien is inviolable, a proportionate fault concept would place a heavy burden on the longshoreman. Unfortunately, the Court failed to adequately explain why the lien could not be reduced. With reference to the judicially created lien applicable when the longshoreman brings suit, the Court merely noted that "[i]n the past, this lien has been for the benefits paid up to the amount of recovery."<sup>103</sup> In discussing the statutory lien applicable when the stevedore sues rather than the longshoreman,<sup>104</sup> the Court again failed to examine the possibility of a lien reduction. The Court's assumption that these liens were inviolable, although perhaps based on the court of appeals' failure to reach the issue,<sup>105</sup> is surprising considering that reduction of the liens was a key part of the vessel owner's argument.<sup>106</sup> The obvious argument for the proposition that the judicially created lien can be reduced is that it rests on equity and, since the courts created the lien, they can reduce it as equity demands. A similar argument can be made that the statutory lien, although not containing any provision for reduction, was created to achieve fairness and can be interpreted accordingly.<sup>107</sup>

The Court also considered that proportionate fault would have consequences inimical to legislative intent because one of the purposes of the 1972 amendments was to take the stevedore out of third-party litigation and a proportionate fault concept would bring him in.<sup>108</sup> Once again the Court unfortunately gave the issue little consideration. Although it is true that one of the

102. 99 S. Ct. at 2762.

103. *Id.* at 2761 (citation omitted).

104. See notes 42-43 and accompanying text *supra*. The Court apparently confused § 933(c) with § 933(e).

105. 99 S. Ct. at 2761 n.26.

106. Brief for Respondent at 40-45.

107. See Coleman & Daly, *supra* note 44, at 404-07.

108. 99 S. Ct. at 2762. The Court alluded to the language in § 905(b) that "the employer shall not be liable to the vessel for such damages *directly or indirectly* . . ." (emphasis added), but did not make it clear if it felt that such language expressly barred the reduction of the vessel owner's liability or was only evidence of the Congressional purpose to get the stevedore out of the courtroom. The Court, however, considered this reduction to be the same as contribution under *Pope & Talbot* and a form of direct or indirect liability that Congress intended to prohibit. 99 S. Ct. at 2762 & n.28; see notes 58-60 and accompanying text *supra*. This is questionable considering the scant mention of *Pope & Talbot* in the hearings and committee reports. See note 73 *supra*. See Coleman & Daly, *supra* note 44, at 406-07, for arguments that the equitable credit is not a form of liability of the stevedore to the vessel owner.

purposes of the amendments was to take the stevedore out of third-party litigation through the elimination of the indemnity action and that the adoption of proportionate fault would bring the stevedore into the courtroom in some cases, it does not follow that the result would be a return to the evils of the pre-1972 situation. Prior to 1972, the longshoreman could sue the vessel owner in a wide variety of actions and the vessel owner could generally bring in the stevedore.<sup>109</sup> After 1972, however, the initial number of cases against the vessel owner had been reduced by the elimination of the unseaworthiness action. Additionally, the vessel owner could only bring in the stevedore when some negligence of the stevedore was involved. Furthermore, the stevedore would not risk liability to the extent he did prior to 1972 when he could be found liable for the entire amount of damages. As indicated above, the consequences of proportionate fault that the Court feared would run counter to congressional intent can be minimized or eliminated under careful, rather than summary, consideration.

The Court's third and final conclusion was that it was precluded from judicially creating a proportionate fault rule under its traditional maritime authority because "[i]n 1972 Congress aligned the rights and liabilities of stevedores, shipowners, and longshoremen in light of the rules of maritime law that it chose not to change."<sup>110</sup> The maritime law referred to is apparently the decision in *Halcyon* that refused contribution in noncollision cases and the subsequent decision in *Pope & Talbot*, which was based on *Halcyon*, that reduction of the vessel owner's liability for benefits received was the equivalent of contribution. There are three problems with the Court's approach. First, one of the major factors underlying *Halcyon*, the impracticality of limiting the employer's contribution to a hypothetical award, disappeared with the 1959 amendments eliminating the old section 933(a) election.<sup>111</sup> Second, the *Halcyon* holding was largely a dead issue during the sixteen years from *Ryan* to the passage of the 1972 amendments.<sup>112</sup> Third, scant mention was made of *Halcyon* in the 1972 hearings and the committee reports contain no

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109. See notes 64-65 and accompanying text *supra*.

110. 99 S. Ct. at 2763 (citation omitted).

111. See notes 45-46 and accompanying text *supra*.

112. See G. GILMORE, *supra* note 37, at 443-44.

mention of it. Despite these three factors, the Court would apparently contend that *Halcyon* sprang to life in 1972 as strong as the day it was written twenty years earlier, and that Congress through some sort of divination relied on *Halcyon*'s force in fashioning the amendments. Such a conclusion is difficult to square with common sense and the Supreme Court's normally broad role in maritime matters.<sup>113</sup> For these reasons it would appear that the dissent was correct in asserting that Congress did not rely on *Halcyon*'s continued vitality in passing the 1972 amendments and that the amendments did not preclude or compel a proportionate fault system.<sup>114</sup>

## V. CONCLUSION

In *Edmonds* the Supreme Court missed an opportunity to exercise its traditionally active role in the area of maritime law and to formulate a rule of contribution that would be equitable to all parties in LHWCA actions. Instead the Court strictly interpreted the statute and found unnecessarily that Congress had intended to preclude the adoption of a proportionate fault concept. Because of the inherent unfairness of the result in *Edmonds*, Congress should consider amendments that would provide for liability proportionate to fault in clear and unambiguous terms. Regardless of any congressional action, however, federal courts should not abandon their obligation to fashion "flexible and fair remedies in the law maritime";<sup>115</sup> but rather should continue to uphold that responsibility despite the recent abdication by the Supreme Court in *Edmonds*.

*William Bobo, Jr.*

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113. See 99 S. Ct. 2765 (Blackmun, J., dissenting).

114. *Id.* at 2764 (Blackmun, J., dissenting).

115. *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 20 (1963).